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9 Attorneys for Defendants Continental
Casualty Company and Transportation
10 Insurance Company

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Nammo Talley, Inc.,
14 Plaintiff,
15 v.

16 Allstate Insurance Company (solely as
17 successor in interest to Northbrook Excess
and Surplus Insurance Company, formerly
18 known as Northbrook Insurance
Company); Continental Casualty
19 Company; Globe Indemnity Company;
National Union Fire Insurance Company of
20 Pittsburgh, PA; Transportation Insurance
Company; ABC Corporations; and XYZ
21 Companies,

22 Defendants.
23

CASE No. 2:11-cv-01007-JAT

**ANSWER OF DEFENDANTS
CONTINENTAL CASUALTY
COMPANY AND TRANSPORTATION
INSURANCE COMPANY TO
COMPLAINT**

(Assigned to: Hon. James A. Teilborg)

24 Defendants Continental Casualty Company ("Continental") and Transportation
25 Insurance Company ("Transportation") (collectively, "Defendants") hereby answer the
26 Complaint of Nammo Talley, Inc. ("Plaintiff"), as follows:

27 **THE PARTIES**

28 1. Defendants admit the allegations contained in Paragraph 1 of the Complaint.

1 2. Responding to the allegations in Paragraph 2 of the Complaint, Defendants
2 admit that they issued certain primary and excess liability policies to Plaintiff. Defendants
3 lack information and belief as to whether the other defendants insured Plaintiff and based
4 thereon, Defendants deny such allegation as to the other defendants. Defendants deny
5 each and every remaining allegation of Paragraph 2 of the Complaint.

6 3. Responding to the allegations contained in Paragraph 3 of the Complaint,
7 Defendants lack information or belief sufficient to form a belief as to the truth of the
8 allegations contained therein, and on that basis, Defendants deny the allegations contained
9 therein.

10 4. Responding to the allegations contained in Paragraph 4 of the Complaint,
11 Defendants admits that Continental is an Illinois corporation, with its principal place of
12 business at CNA Plaza, Chicago, Illinois 60604. Defendants admit that the documents
13 attached as Exhibit B are copies or partial copies of policies issued by Continental. Except
14 as admitted, Defendants deny the allegations of Paragraph 4 of the Complaint.

15 5. Responding to the allegations contained in Paragraph 5 of the Complaint,
16 Defendants lack information or belief sufficient to form a belief as to the truth of the
17 allegations contained therein, and on that basis, Defendants deny the allegations contained
18 therein.

19 6. Responding to the allegations contained in Paragraph 6 of the Complaint,
20 Defendants lack information or belief sufficient to form a belief as to the truth of the
21 allegations contained therein, and on that basis, Defendants deny the allegations contained
22 therein.

23 7. Responding to the allegations contained in Paragraph 7 of the Complaint,
24 Defendants admits that Transportation is an Illinois corporation, with its principal place of
25 business at CNA Plaza, Chicago, Illinois 60604. Defendants admit that Transportation is a
26 property and casualty insurance company. Defendants admit that the documents attached
27 as Exhibit E are copies or partial copies of policies issued by Transportation. Except as
28 admitted, Defendants deny the allegations of Paragraph 7 of the Complaint.

1 8. Responding to the allegations contained in Paragraph 8 of the Complaint,
2 Defendants admit that they are engaged in the business of writing liability insurance.
3 Defendants further admit that they issued those policies of insurance to Plaintiff identified
4 on Exhibit A as issued by Defendants; however, Defendants deny that any policy of
5 insurance issued or purportedly issued by Defendants provides a duty to defend or
6 indemnify Plaintiff and/or a duty to pay or reimburse the costs of clean-up or remediation,
7 in connection with the facts, claims, suits and/or losses alleged in the Complaint.

8 **JURISDICTION AND VENUE**

9 9. Responding to the allegations contained in Paragraph 9 of the Complaint,
10 Defendants refer to and incorporate by reference Paragraphs 1-8, inclusive, of this Answer.

11 10. Defendants admit the allegations contained in Paragraph 10 of the
12 Complaint.

13 11. Defendants admit the allegations contained in Paragraph 11 of the
14 Complaint.

15 12. Defendants admit the allegations contained in Paragraph 12 of the
16 Complaint.

17 **GENERAL ALLEGATIONS**

18 13. Responding to the allegations contained in Paragraph 13 of the Complaint,
19 Defendants refer to and incorporate by reference Paragraphs 1-12, inclusive, of this
20 Answer.

21 14. Responding to the allegations contained in Paragraph 14 of the Complaint,
22 Defendants admit that the Complaint purports to allege claims for declaratory relief,
23 breach of contract and bad faith, and such Complaint seeks compensatory damages and
24 "other relief;" however, Defendants specifically deny that Plaintiff is entitled to any of the
25 relief claimed (other than a declaration of the rights and duties of the parties) and
26 Defendants deny that any policy of insurance issued by Defendants provides a duty to
27 defend or indemnify Plaintiff and/or a duty to pay or reimburse the costs of clean-up or
28 remediation, in connection with the facts, claims, suits and/or losses alleged in the

1 Complaint.

2 15. Responding to the allegations contained in Paragraph 15 of the Complaint,
3 Defendants admit that it understands Plaintiff to be a defense contractor that manufactures
4 weapons, aerospace equipment and propellant at the Nammo Talley Site ("the Site").
5 Defendants lack information and belief as to the particulars of any lease agreement and
6 thus cannot form a belief as to the truth of the allegations contained in Paragraph 15 about
7 the lease, and on that basis, Defendants deny such allegations. Defendants further deny the
8 remaining allegations of Paragraph 15 of the Complaint.

9 16. Defendants deny each and every allegation of Paragraph 16, and Defendants
10 specifically deny that any lead, perchlorate and other contamination at the Site and/or
11 neighboring properties was unexpected, unintended and/or unintentional.

12 17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

13 18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

14 19. Responding to the allegations contained in Paragraph 19 of the Complaint,
15 Defendants admit the existence of a Consent Judgment against Plaintiff. Except as
16 expressly admitted, Defendants deny the allegations contained in Paragraph 19 of the
17 Complaint.

18 20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

19 21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

20 22. Responding to the allegations contained in Paragraph 22 of the Complaint,
21 Defendants lack information or belief sufficient to form a belief as to the truth of the
22 factual allegations contained therein, and on that basis, Defendants deny the allegations
23 contained therein. No response is required as to the legal conclusions as to the scope of
24 ADEQ's legal authority.

25 23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

26 24. Defendants admit the allegations contained in Paragraph 24 of the
27 Complaint.

28 25. Responding to the allegations contained in Paragraph 25 of the Complaint,

1 Defendants lack information or belief sufficient to form a belief as to the truth of the
2 allegations contained therein, and on that basis, Defendants deny the allegations contained
3 therein.

4 26. Responding to the allegations contained in Paragraph 26 of the Complaint,
5 Defendants lack information or belief sufficient to form a belief as to the truth of the
6 allegations contained therein, and on that basis, Defendants deny the allegations contained
7 therein.

8 27. Responding to the allegations contained in Paragraph 27 of the Complaint,
9 Defendants lack information or belief sufficient to form a belief as to the truth of the
10 allegations contained therein, and on that basis, Defendants deny the allegations contained
11 therein.

12 28. Responding to the allegations contained in Paragraph 28 of the Complaint,
13 Defendants admit that Plaintiff discharged liquids into unlined ponds. To any other extent,
14 Defendants deny the allegations contained in Paragraph 28 of the Complaint.

15 29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

16 30. Responding to the allegations contained in Paragraph 30 of the Complaint,
17 Defendants lack information or belief sufficient to form a belief as to the truth of the
18 allegations contained therein, and on that basis, Defendants deny the allegations contained
19 therein.

20 31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

21 32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

22 33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

23 34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

24 35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

25 36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

26 37. Responding to the allegations contained in Paragraph 37 of the Complaint,
27 Defendants admit that by this lawsuit, Plaintiff seeks to recover from defendants certain
28 payments for defense, indemnity or otherwise in connection with contamination cause by

1 Plaintiff at the Site and/or surrounding properties. To any other extent, Defendants deny
 2 the allegations of Paragraph 37 and Defendants specifically deny that their insurance
 3 policies provide defense or indemnity coverage to Plaintiff and/or obligate Defendants to
 4 pay or reimburse the costs of clean-up or remediation, in connection with the facts, claims,
 5 losses and/or suits alleged in the Complaint.

6 38. Responding to the allegations contained in Paragraph 38 of the Complaint,
 7 Defendants admit that Defendants issued the policies attributed to them as listed on Exhibit
 8 A. To any other extent, Defendants deny the allegations of Paragraph 38 and Defendants
 9 specifically deny that their insurance policies provide defense or indemnity coverage to
 10 Plaintiff and/or obligate Defendants to pay or reimburse the costs of clean-up or
 11 remediation, in connection with the facts, claims and/or suits alleged in the Complaint. As
 12 to policies issued by insurers other than Defendants, Defendants lack information or belief
 13 sufficient to form a belief as to the truth of the allegations contained therein, and on that
 14 basis, Defendants deny the allegations contained therein.

15 39. Responding to the allegations contained in Paragraph 39 of the Complaint,
 16 Defendants admit that, subject to certain conditions, limitations and exclusions, its policies
 17 contain the language identified in the documents attached to the Complaint as attributed to
 18 Defendants. To any other extent, Defendants deny the allegations of Paragraph 39 and
 19 Defendants specifically deny that their insurance policies provide defense or indemnity
 20 coverage to Plaintiff and/or obligate Defendants to pay or reimburse the costs of clean-up
 21 or remediation, in connection with the facts, claims and/or suits alleged in the Complaint.
 22 As to policies issued by insurers other than Defendants, Defendants lack information or
 23 belief sufficient to form a belief as to the truth of the allegations contained therein, and on
 24 that basis, Defendants deny the allegations contained therein.

25 40. Responding to the allegations contained in Paragraph 40 of the Complaint,
 26 Defendants admit that Exhibit B contains policy language contained in the insurance
 27 policies issued by Continental and that Exhibit E contains policy language contained in the
 28 insurance policies issued by Transportation, both of which are subject to certain

1 conditions, limitations and exclusions contained in such policies. To any other extent,
2 Defendants deny the allegations of Paragraph 40 and Defendants specifically deny that
3 their insurance policies provide defense or indemnity coverage to Plaintiff and/or obligate
4 Defendants to pay or reimburse the costs of clean-up or remediation, in connection with
5 the facts, claims and/or suits alleged in the Complaint. As to policies issued by insurers
6 other than Defendants, Defendants lack information or belief sufficient to form a belief as
7 to the truth of the allegations contained therein, and on that basis, Defendants deny the
8 allegations contained therein.

9 41. Responding to the allegations contained in Paragraph 41 of the Complaint,
10 Defendants admit that they issued the insurance policies attributed to them as listed on
11 Exhibit A. As to policies issued by insurers other than Defendants, Defendants lack
12 information or belief sufficient to form a belief as to the truth of the allegations contained
13 therein, and on that basis, Defendants deny the allegations contained therein.

14 42. Responding to the allegations contained in Paragraph 42 of the Complaint,
15 Defendants lack information or belief sufficient to form a belief as to the truth of the
16 allegations contained therein, and on that basis, Defendants deny the allegations contained
17 therein.

18 43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

19 44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

20 45. Responding to the allegations contained in Paragraph 45 of the Complaint,
21 Defendants lack information or belief sufficient to form a belief as to the truth of the
22 allegations contained therein, and on that basis, Defendants deny the allegations contained
23 therein.

24 46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

25 47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

26 48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

27 49. Defendants deny the allegations contained in Paragraph 49 of the Complaint.

28 50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

63. Defendants admit the allegations contained in Paragraph 63.

64. Defendants admit that the controversy between Plaintiff and Defendants concerning Defendants' insurance policies involves various issues and that the Court may declare the rights and duties of the parties with respect thereto; however, Defendants deny that Plaintiff is entitled to the relief requested and/or a declaratory judgment in its favor. Except as expressly admitted, Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. Responding to the allegations contained in Paragraph 66 of the Complaint, Defendants admit that Plaintiff seeks such a judicial declaration; however, Defendants deny that Plaintiff is entitled to a judicial declaration in its favor. Except as expressly admitted, Defendants deny the allegations contained in Paragraph 66 of the Complaint.

COUNT II

(Breach of Contract)

67. Responding to the allegations contained in Paragraph 67 of the Complaint, Defendants refer to and incorporate by reference each and every response contained in Paragraphs 1 through 66, inclusive, of this Answer.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

COUNT III

(Breach of the Duty of Good Faith and Fair Dealing)

70. Responding to the allegations contained in Paragraph 70 of the Complaint, Defendants refer to and incorporate by reference each and every response contained in Paragraphs 1 through 69, inclusive, of this Answer.

71. Defendants admit the allegations contained in Paragraph 71 of the Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint.

COUNT IV

(Common Law Negligent Misrepresentation and Violation of

A.R.S. § 20-443)

75. Responding to the allegations contained in Paragraph 75 of the Complaint, Defendants refer to and incorporate by reference each and every response contained in Paragraphs 1 through 74, inclusive, to this Answer.

76. Defendants deny the allegations contained in Paragraph 76 of the Complaint.

77. Responding to the allegations contained in Paragraph 77 of the Complaint, Defendants admit that there is a covenant of good faith and fair dealing implied in Defendants' insurance policies issued to Plaintiff. To any other extent, Defendants deny the allegations to Paragraph 77 of the Complaint.

78. Defendants deny the allegations of Paragraph 78 of the Complaint.

79. Defendants deny the allegations of Paragraph 79 of the Complaint.

80. Defendants deny the allegations of Paragraph 80 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

81. The Complaint does not state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

82. Defendants' policies contain pollution and contamination exclusions which bar defense and indemnity coverage for the facts, claims and losses alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

83. There is no coverage under Defendants' policies to the extent that the losses alleged do not fall within the definition of "property damage" as defined in the policies and/or during the policy periods.

FOURTH AFFIRMATIVE DEFENSE

84. There is no coverage under Defendants' policies to the extent that the losses alleged do not fall within the definition of "occurrence" under the policies.

FIFTH AFFIRMATIVE DEFENSE

85. There is no coverage under Defendants' policies to the extent that the investigation, clean-up and/or remediation expenses alleged in the Complaint do not qualify "as damages."

SIXTH AFFIRMATIVE DEFENSE

86. There is no coverage under Defendants' policies to the extent that Plaintiff voluntarily assumed any obligations or incurred any expenses.

SEVENTH AFFIRMATIVE DEFENSE

87. There is no coverage under Defendants' policies to the extent that the exclusions, terms and/or conditions of the policies apply to bar coverage, including but not limited to, the owned property exclusions.

EIGHTH AFFIRMATIVE DEFENSE

88. Defendants' policies contain various limits of liability, including but not limited to per occurrence, in the aggregate and/or in the event of other insurance. In the event that Defendants are liable to Plaintiff (which liability is expressly denied), Defendants' liability is restricted to the limits of liability in Defendants' policies.

NINTH AFFIRMATIVE DEFENSE

89. Coverage under Defendants' policies may be barred to the extent that Plaintiff has impaired or prejudiced any right to subrogation, indemnification or contribution that Defendants may otherwise have had.

TENTH AFFIRMATIVE DEFENSE

90. Should it be determined that Defendants have any insuring obligation with respect to losses alleged in the Complaint, Plaintiff's right to recover from Defendants would be subject to the proper allocation of such amounts to the periods and layers of coverage when injury or damage actually occurred, including periods and/or layers where Plaintiff did not have insurance.

ELEVENTH AFFIRMATIVE DEFENSE

91. Defendants have no obligation under Defendants' policies to the extent that

1 Plaintiff has failed to cooperate, did not satisfy any of its obligations under the policies,
2 breached the policies and/or did not satisfy any condition precedent to coverage under the
3 policies.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 92. To the extent that Plaintiff has failed to mitigate, minimize or avoid any of
6 the costs or damages it allegedly sustained, any recovery against Defendants must be
7 reduced.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 93. There is no coverage under Defendants' policies to the extent that the policies
10 are excess and the underlying insurance has not been properly exhausted.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 94. There is no coverage under Defendants' policies to the extent that Plaintiff
13 failed to give timely written notice of the facts, losses, claims and/or suits alleged in the
14 Complaint or incurred expenses prior to tender.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 95. There is no duty to defend Plaintiff as there is no "suit" as required by
17 Defendants' policies.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 96. No claim for the asserted breach of the duty of good faith and fair dealing
20 exists because Defendants had a reasonable basis to deny the claim alleged in the
21 Complaint.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 97. Defendants assert all affirmative defenses listed in the Federal Rules of Civil
24 Procedure, Rules 8(c) and 12(b).

25 WHEREFORE, Defendants pray for the following relief:

- 26 1. That Plaintiff takes nothing by its Complaint;
27 2. That the Court declare that Defendants' defenses are correct;
28 3. That the Court award costs of suit to Defendants;

4. That the Court award reasonable attorneys fees and expenses to Defendants in accordance with A.R.S. §§ 12-341 and 12-341.01; and

5. Such other relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury.

DATED: December 8, 2011

BERKES CRANE ROBINSON & SEAL LLP

By: s/ Steven M. Crane

STEVEN M. CRANE

515 South Figueroa Street, Suite 1500
Los Angeles, California 90071

DATED: December 8, 2011

MEAGHER & GEER PLLP

By: s/ John C. Hendricks

John C. Hendricks

8800 N. Gainey Center Dr., Ste. 261
Scottsdale, AZ 85258

Attorneys for Defendant

Continental Casualty Company and
Transportation Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2011, I electronically transmitted the attached document to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice of electronic filing to the following CM/ECF registrants:

Clerk of the Court
United States District Court
Sandra Day O'Connor U.S. Courthouse
401 W. Jefferson
Phoenix, AZ 85003

Hon. James A. Teilborg
United States District Court
Sandra Day O'Connor U.S. Courthouse
401 W. Jefferson
Phoenix, AZ 85003

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5 One E. Washington St., Ste. 1200
6 Phoenix, AZ 85004
7 *Attorneys for Plaintiff*

8
9 I hereby certify that on this 8th day of December, 2011, I served the attached
10 document by mail delivery on the following who are not participants of the CM/ECF
11 system:

12 None.

13 I hereby certify that on this 8th day of December, 2011, I mailed a courtesy copy of
14 the attached document to:

15 None

16 By: s/Judy Mannino

17 84437